IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

W.P.No.1530 of 1997

Tamil Nadu Veterinary and Animal
Sciences University Scientists
Association,
Madras Veterinary College, Chennai
represented by its Secretary
Dr. F.R.Sheriff .....Petitioner

-Vs-

1. State of Tamil Nadu,
rep. by Secretary to
Government,
Animal Husbandry and Fisheries
Department, Madras 600 009.

2. Tamil Nadu Veterinary and Animal
Sciences University,
Madras 7
represented by its Registrar .....Respondents

Writ Petition, under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :: Mr. Mohan Parasaran
Senior Counsel for
Mr. Sathish Parasaran

For Respondents:: Mr. M.S.Palanisamy for R-1
Addl., Government Pleader

Mr. S. Vijayakumar for R-2

:O R D E R

The petitioner is an Association, consisting of Scientists,
who are working in the Tamil Nadu Veterinary and Animal Sciences University.
When the scale of pay of Professors under Career Advancement scheme, who are
promoted from the post of Associate Professors was sought to be re-fixed by

G.O.Ms.No.15 Animal Husbandary and Fisheries (AH.6) Department dated 27.01.1997, and recovery proceedings were initiated, the petitioner Association has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the same and also for a direction to the second respondent to continue to apply the provisions of Regulation 10(3) of the Tamil Nadu Veterinary and Animal Sciences University Regulations by providing the pay fixation with a minimum benefit of 5% to all professors directly recruited under Career Advancement Scheme and those directly recruited under Sl.No.10 of Appendix IA of the Regulations without any distinction.

2.1. In nutshell, the facts of the case are as follows:-
Concededly, the post of Associate Professors working in Tamil Nadu Veterinary and Animal Sciences University (hereinafter referred to as the University) carries a scale of pay of Rs.3700-125-4950-150-5700 and their

service conditions are governed under the provisions of Tamil Nadu Veterinary and Animal Sciences University Act 1989 (Tamil Nadu Act 42 of 1989)(in brevity the Act) and the Regulations framed thereunder.

2.2. Based on the recommendations of the University Grants Commission, provisions were made for promotion of Associate Professors as Professors under Career Advancement Shceme (hereinafter referred to as Professors), thereby introducing an additional source of recruitment. It is not in dispute that those, who are eligible to be considered for promotion under the career Advancement scheme from the post of Associate Professors to the post of Professors shall carry the scale of pay of Rs.4500-150-5700-200-7300 and they are merit promotees, who are distinguished from the regular promotees. Even though the source of promotion for the regular promotees and merit promotees differs, it is not in dispute that the nature of work, the workload and the responsibilities of the Professors are similar in both cases. Therefore, once an Associate Professor is promoted on merit as a Professor, certainly he continues to work as promotee Professor till he retires or otherwise cease to be an employee of the University till he is reverted for some valid reasons. But, there is no question of such a merit promotee being reverted otherwise to the lower cadre from which he came.

Consequently, he has to work as the Professor and share the workload with the cadre employees, who are promoted as Professors likely. Therefore, it cannot be said that such a merit promotee is not similar to a regular Professor either from his workload point of view or that of his responsibility as Professors. It is only under such circumstances, the University fixed the scale of pay to Professors, who are promoted from the post of Associate Professors in accordance with Regulation 10(3) of the Tamil Nadu Veterinary and Animal Sciences University Regulations (in brevity the Regulations), framed in exercise of the powers conferred by sub-section (4) of Section 48 read with subsection (1) of Section 40 of the Act.

2.3. It is apt to refer Section 40(1) of the Act, which provides regulation making power to the authorities of the University in the matter of appointment, procedure for selection, pay and allowance, other

conditions of the officers, teachers and other employees of the University, which reads as follows:-

"40(1) Subject to the provisions of this Act and the statutes, the authorities of the University may make regulations to provide for all or any of the following matters, namely -

(a) the manner in which and the conditions subject to which the person, gratuity, insurance and provident fund may be instituted for the benefit of the officers, teachers and other employees of the University;

(b) the appointment, procedure for selection, pay and allowances and other conditions of service of officers, teachers and other employees of the University.

(c) the giving of notice to the members of any authority of the University the date of the meetings and the business to be transacted at the meetings and for keeping a record of the proceedings of the meetings.

(d) the procedure to be observed at the meetings and the number of members required to form the quorum; and
(e) any other matter which is required to be or may be prescribed by regulations."

2.4. Sections 48(2) and 48(4) of the Act deal with the duties of the Vice Chancellor, which reads as follows:-

"48(2) The First Vice-Chancellor shall, in consultation with the Government, make such rules as may be necessary for the functioning of the University.

"48(4) It shall be the duty of the first Vice-Chancellor to make such statutes and regulations as may be necessary with the approval of the Chancellor and submit them to the respective authorities, competent to deal with them for their disposal. Such statutes and regulations when framed shall be published in the Tamil Nadu Government Gazette."

2.5. While Chapter IV of the Regulations deals with Service Conditions, Leave Rules, Travelling Allowances etc., Regulation 10(3) under the said Chapter deals with method of recruitment and the fixation of pay, which runs as follows:-

"10(1) xxxxxxxx
10(2) xxxxxxxx
10(3) Every employee of the University selected for appointment / promotion by transfer to a higher post involving higher duties and responsibilities shall have his pay fixed at the minimum of the time scale applicable to such higher post or at the stage in the said time scale next above the pay notionally arrived at by increasing his pay in the lower post by one increment whichever is higher. The minimum monetary benefit shall be 5 per cent over the pay drawn in the lower post. If the pay in the lower post

on the date of promotion / appointment plus 5 per cent of that pay is a stage in the scale of pay of the higher post, pay shall be fixed in the higher post at that stage. If there is no corresponding stage in the scale of pay of the higher post, pay shall be fixed at the next higher stage.

(a) When a person appointed / promoted to an unclassified post by direct recruitment or by recruitment by transfer / promotion, to which service rules or adhoc rules have not been prescribed, the following method shall be adopted for fixation of pay.

Method of appointment Method of fixation of pay

i) Direct Recruitment Minimum of the time scale of pay prescribed to the post

ii)By recruitment by transfer i) The same rate of pay, drawn in the post previously held, if both the post carry identical scales of pay.

ii) if the scale of pay of the unclassified post is higher, fixation as per government rules from time to time by orders of the University.

iii) By Promotion Pay fixation as per Government rules after getting University orders

b) When a person, who does not possess the qualification if any prescribed for appointment to a post borne on the cadre of a service, class or category or for appointment to a post borne on the cadre of a higher category in a service or class, his temporarily appointed / promoted, he is eligible for the highest of the following rates of pay -
i) His substantive pay; or

ii) The minimum of the time scale of pay of the post; or

iii)the officiating pay which he would have drawn from time to time in the post regularly held by him immediately prior to the temporary appointment / promotion to the post, subject to issue of officiating certificate.

10(4) Employee promoted / appointed to a higher post on or after 1 st May 1981 shall have the option for fixation of his pay to his best advantage, either -

(a) with reference to pay fixed under Regulation 10(3) on the date of

Promotion / appointment with reference to the pay in the lower post immediately prior to the promotion / appointment to higher post, without any further review on accrual of the next increment in the lower post; or

(b) the employee on promotion / appointment to a higher post shall have his pay initially fixed in the higher post in a stage next above the pay drawn in the lower post. On the date of accrual of next increment in the lower post, his pay shall be refixed as contemplated in Regulation 10(3)

(c) Option shall be exercised within one month from the date of promotion / appointment to higher post and the option so exercised shall be final.

(d) If the pay is fixed, under Regulation 10(3), the next increment shall be allowed on completion of one year of qualifying service with effect from the date of re-fixation of such pay.

(e) For rectification of anamolies arising consequent on the above mode of fixation, among the senior and junior employees, orders of the University is required.

10(5) Fixation of pay under Regulation 10(3) shall be allowed for employees appointed / promoted to a higher post temporarily, provided the employee satisfies all the requirements prescribed for the post to which such promotion / appointment is made".

2.6. As per Regulation 10(3) of the Regulations, the persons who are promoted from the post of Associate Professors to the post of Professors are entitled to a minimum monetary benefit of 5% over the pay drawn in the lower post.

2.7. As per Regulation 10(4) of the Regulations, the employee on promotion viz., the Professors in the instant case are entitled for option within a period of one month from the date of such promotion in fixing the higher scale of pay in accordance with Regulations, which is in order to rectify any anomaly that may arise consequent to the method of fixation of pay.

2.8. In this regard, it is relevant to refer the calculation of Scale of Pay and the procedure, which are prescribed for the Professors both who are regular promotees as well as merit promotees promoted as Professors from the post of Associate Professors as provided under clause 10(2) of Appendix IA to the Regulations.

Name of the posts & scales of pay
Qualification
Constitution of selection committee

Appointing authority

Professor:
Rs.4500-150-5,700-200-7300
a) Ph.D.Degree with 10 years of experience in the teaching research in the concerned subject
a) Vice-Chancellor - Chairman;
b) Two External Experts nominated by the Vice-Chancellor among the panel of External Experts approved by the Board of Management - Members

c) Faculty Dean-Member
d) Director concerned (in respect of the faculty) Member
Vice - Chancellor

Career Advancement of Associate Professor as Professor:
Rs.4500-150-5,700-200-7,300
a)Ph.D degree with 5 years of service as Associate Professor
a) Vice-Chancellor - Chairman;
b) Two External Experts nominated by the Vice-Chancellor among the panel of External Experts approved by the Board - Members
c) Faculty Dean-Member
d) Director concerned (in respect of Veterinary faculty) Member
Vice - Chancellor

2.9. When once option was exercised, the vested right of the promotees whether regular promotees or merit promotees, as the case may be, such fixation of pay under the Regulations 10(3) of the Regulations shall be allowed to the Promotees.

2.10 That apart, this principle is also in consonance with the General Rules of the University which are made exercising the powers conferred under clause 56 of the Tamil Nadu Veterinary and Animal Sciences University Statutes and Rule 2 of the General Rules of the University reads as follows:- Person appointed / placed under Career Advancement scheme are to be treated as promotion with higher responsibilities since they are not elevated merely after completion of stipulated service but only after undergoing normal selection procedure stipulated in Statutes, and Regulations of the University which is the same as that of regular selection procedure. Hence, as such persons promoted under the above, scheme, are eligible for pay fixation as per Section 10(3) of the Regulations and these persons can occupy regular equivalent post with lien of the Career Advancement post".

3. A harmonious reading of Sections 40(1), 48(2), 48(4) of the Act read with 10(3), 10(4), 10(5) of the Regulations and Rule 2 of the General Rules framed under clause 56 of the Statute would make it clear that the merit promotees who are promoted to the post of Professors from the post of Associate Professors are considered on par with the Professors who are regular promotees.

4. The University, having thus satisfied that they are eligible for fixation of pay according to Regulations 10(3), 10(4), 10(5) of the Regulations, fixed their scale of pay as in the case of other promotees in

the Government service, who availed the same under Rule 22(B) of the Fundamental Rules (in brevity the FR), which reads as follows:-

"22-B. Notwithstanding anything contained in these rules, where a Government servant holding a post in a substantive or officiating capacity, is promoted or appointed in a substantive or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment, at the stage at which such pay has accrued. If the monetary benefit after such fixation falls short of five per cent of the pay drawn in the lower post, his pay in higher post shall be so fixed, allowing a minimum increase of five per cent of the pay drawn in the lower post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post is a stage in the time scale of pay of the higher post, the pay shall be fixed at such stage in the time scale of pay of the higher post. Where the pay drawn in the lower post on the date of promotion or appointment plus five per cent of the pay drawn in the lower post exceed the amount arrived at for fixation of pay in the higher post under this rule but where there is no corresponding stage in the time scale of pay of the higher post, the pay shall be fixed at the next higher stage in the time scale of pay of the higher post".

5. However, the Government, by the impugned order proposed to apply Rule 35 under Rule 22 of FR and sought to revise the scale of pay of the Professors and to recover the excess amount paid to them. The impugned Government Orders runs as follows:-

"Government of Tamil Nadu
Abstract
Tamil Nadu Veterinary and Animal Sciences University -
University Grant Commission Scales of pay for teaching staff and career Advancement - Fixation of pay under FR 22(B) with 5% benefit orders - issued.
- -
Animal Husbandary and Fisheries (AH6) Dept.
G.O.Ms.No.15 Dated: 27.01.1997
1) From the Registrar, Tamil Nadu Veterinary and Animal Sciences University, Letter No.17012/A1/89 dated 25.02.1991.
2) From the Registrar, Tamil Nadu Veterinary and Animal Sciences University, Letter No.17012/A1/89 dated 07.12.1992
3) From the Registrar, Tamil Nadu Veterinary and Animal Sciences University, Letter No.18012/A1/89 dated 10.08.1993.
4) From the Examiner of Locul Fund Accounts, Thayar Sahib Street, Madras -2 Letter Rc.F4.55488/93 dated 26.08.1993.
5) Government Letter No.41669/AH.6/90-14 dated 09.11.1993.
6) Government Letter No.3752/AU/90-43 Agriculture dated 22.11.1993.
- - - - - -
O R D E R
The Examiner of Locul Fund Accounts, Madras in his letter 4th read above has raised a clarification as to whether the contention as of the

Registrar, Tamil Nadu Veterinary and Animal Sciences University that Associate Professors (Rs.3700-5700) appointed as Professors (Rs.450 0-7300) under Career Advancement Scheme are eligible for fixation of pay under Regulation 10(3) of the Tamil Nadu Veterinary and Animal Sciences University with 5% minimum benefit can be accepted.

2) In response to the letters 1st to 3rd read above, relating to the question of fixation of pay under Career Advancement Scheme, the Government in their letters 5th read above apprised the Registrar of the Statutory provisions under the Tamil Nadu Veterinary and Animal Sciences University Act 1989 and Statute 5% of the Statutes of the Tamil Nadu Veterinary and Animal Sciences University 1990. The Government specifically refrained from offering any clarification in regard to the fixation of pay to the Associate Professor of the University under Career Advancement Scheme. The Government have not specifically agreed to the fixation of pay under FR 22(B) with 5% benefit.
3) The Government have examined the request of the Tamil Nadu Agricultural University for fixation of pay of teaching staff elevated under Career Advancement scheme under FR 22(B) with 5% minimum benefit. After careful examination, the Government have decided that the proposal is not only against the principle of fixation of pay adopted in respect of other teachers governed by University Grants Commission and All India Council for Technical Education Commission. Further, movement to career Advancement is like movement to Selection Grade / Special Grade. Then, Government have, therefore, considered that there is no justification for fixation of pay under FR 22(B) with 5% benefit in respect of teachers elevated under Career Advancement Scheme in Tamil Nadu Agricultural University and accordingly in the letter 6th read above rejected the proposal of the Tamil Nadu Agricultural University for fixation of pay under FR 22(B) with 5% minimum benefit.

4) In the Government Service, under Career Advancement Scheme / Selection Grade the pay shall be regulated as per Ruling (35) under FR 22 and fixation of pay under FR 22(B) is not allowed. On the same analogy the question of following the procedure on fixation of pay on Career Advancement to the teaching staff of Tamil Nadu Veterinary and Animal Sciences University was engaging the attention of the Government.

5) The implications of the clarification issued in the letter 5th read above are that the Vice Chancellor can exercise the powers to make rules, guidelines, etc. However, while exercising such Statutory powers, it is imperative that the Vice Chancellor follows the existing Government Orders, rules and procedure. The Tamil Nadu Veterinary and Animal Sciences University cannot choose a particular rule or procedure which may from the basis of administrative discrimination. The Tamil Nadu Veterinary and Animal Sciences University, while fixing pay under Career Advancement Scheme has wrongly fixed pay under FR 22(B) with 5% minimum benefit. The pay fixation should have been done under Ruling (35) under FR 22. The fixation of pay done by the Tamil Nadu Veterinary and Animal Sciences University will have far reaching consequences.

6) The decision of the Government detailed in paragraph 3 above will be equally applicable to the staff of the Tamil Nadu Veterinary and Animal

Sciences University as the staff of both universities are similarly placed. The Government therefore, direct that fixation of pay under Career Advancement Scheme to teaching staff who are elevated under Career Advancement Scheme should be made under Ruling (35) under FR 22 and not under FR 22(B) with 5% minimum benefit. The fixation of pay under FR 22-B with 5% minimum benefit is wrong.

7. The Government therefore, direct:-
i) to revise the pay fixation already issued under FR 22(B) with 5% minimum benefit to the Teaching Staff elevated in Tamil Nadu Veterinary and Animal Sciences University under Career Advancement Scheme;
ii) to fix pay under Ruling (35) under FR 22; and
iii) to recover the excess pay paid due to wrong fixation under FR 2 2(B) with 5% minimum benefit.

8. The Registrar, Tamil Nadu Veterinary and Animal Sciences University is requested to take necessary action immediately and a report to the Government.

9. This order issued with the concurrence of personnel and Administrative Reforms / Finance Department vide their U.O.No.83392/96-1 personnel and Administrative Reforms (FRI) dated 16.12.1996 and U.O.No.10 1541/AH & F/96 Finance Department dated 07.01.1997 respectively.
(By Order of the Governor)
M.Raman,
Secretary to Government."

6. Aggrieved by the above said Government Order, the petitioner / Association on behalf of the merit promotees viz., Professors filed the writ petition challenging the impugned order on the following grounds:-

(i) Rule 35 to FR 22 is not applicable to the case, much less FR 22 -B is directly covered under Sections 40(1), 48(2), 48(4) of the Act read with 10(3), 10(4), 10(5) of the Regulations and Rule 2 of the General Rules framed under clause 56 of the Statute.

(ii) In any event, if the Government proposes to test the entitlement of the petitioners in the light of the Fundamental Rules, which are strictly applicable to the Government servants, it is contended that FR 22-B alone would be applicable to the petitioners and not Rule 3 5 to FR 22.

(iii) Since the workload, responsibility and the nature of work of the Professors are identical to that of the regular employees, applying the doctrine of equal pay to equal work, they are entitled for the same scale of pay as applicable to the regular promotees. Any denial would offend Article 14 and 19(1)(g) of the Constitution of India and discriminatory, as equals are treated unequals. In this regard, learned counsel for the petitioner places reliance upon the decision of the Division

Bench of this Court reported in DR. P. RAMASAMY ..VS.. STATE OF TAMIL NADU AND OTHERS (2003 (3) M.L.J. 792), which also arises under similar facts and circumstances of the case.

(iv) In any event, it is contended that having fixed the scale of pay under Regulations 10(3), 10(4) and 10(5) of the Regulations by the second respondent University, the Professors were conferred with vested right and the same ought not to have been interfered without giving any reasonable opportunity, otherwise it would violate the principles of natural justice.

7.1. Per contra, Mr. M.S.Palanisamy, Learned Additional Government Pleader appearing for the respondents submits that the Career Advancement Scheme is only intended to provide promotion to those who are qualified, but could not be promoted for want of cadre strength. Therefore, the Professors promoted from that of the post of Associate Professors and the Professors by regular promotion cannot be treated as on par.

7.2. Further contention of the learned Additional Government Pleader is that only in order to provide a higher scale of pay, they have been promoted as Professors for want of cadre strength and to redress their grievance due to the stagnation in the promotion avenue, they are entitled to be considered as selection grade employees, whose case fall under Rule 35 of FR 22 and therefore, they cannot claim as promotees at all.

7.3. Learned Additional Government Pleader further contends that the merit promotees are deemed to be considered only as selection Grade, in which event, they are entitled to fixation of pay under Rule 35 of FR 22, but not entitled for 5% minimum increase to the pay last drawn in the lower post.

7.4. Learned Additional Government Pleader placing reliance on the decision reported in DR. RASHMI SRIVASTAVA ..VS.. VIKRAM UNIVERSITY (1995 (3) S.C.C. 653) contends that the merit promotes would fall outside the cadre as their source of recruitment is different from the regular promotees and therefore, the merit promotees are not entitled for the same scale of pay as that of regular promotees relying on FR-2 2-B.

8. I have given careful consideration to the submissions of both the parties.

9. It is settled law that if a statute has conferred on a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits doing the act in any other manner than what has been prescribed (vide TAYLOR ..VS.. TAYLOR reported in 1876 1 CH D 426). The basic plea made on behalf of the Government that there is no provision under the statue governing the service conditions of the merit promotees viz., Professors is incorrect. Appendix 1A to Regulation 10 deals with qualification, method of recruitment to the post of Professors who are regularly promoted and that of merit promotees as Professors from the post of Associate Professors under Career Advancement Scheme. The method of selection

in both cases are also identical. There is no dispute as that the workload, the responsibilities and the nature of work of the regular Professors as well as Professors under the Career Advancement Scheme are identical. As per Regulation 10(3) of the Regulations, they are entitled to minimum increase of 5% of incentive as referred to above.

10. Rule 2 of the General Rules framed under clause 56 of the Statute further makes it clear that the persons appointed under Career Advancement scheme are to be treated as promotees with higher responsibility and they are eligible for fixation of pay under Regulation 10(3) of the Regulations.

11. In view of the above clear provisions under Sections 40(1), 48 (2), 48(4) of the Act read with 10(3), 10(4), 10(5) of the Regulations and Rule 2 of the General Rules, framed under clause 56 of the Statute, it cannot be disputed that the service conditions, workload, responsibilities, nature of work of the merit promotees and Professors under Career Advancement Scheme are identical and also covered under the specific provisions. Therefore, it is not a status on the respondents as a Selection Grade under Rule 35 of FR 22, but for all purposes and in spirit and substance, it is a promotion under a different source of recruitment viz., Career Advancement Scheme. The question that there is no provision for recruitment of merit promotees as professors under Career Advancement Scheme is also totally misconceived.

12. In the instant case, the issue is not relating to fixation of seniority among the merit promotees and the regular promotees, but the issue is with reference to the withdrawal of re-fixation of salary and the proposed recovery of excess payment. Therefore, the reliance placed by Mr. M.S.Palanisamy, learned Additional Government Pleader on the decision of DR. RASHMI SRIVASTAVA ..VS.. VIKRAM UNIVERSITY (1995 (3) S.C.C. 653) is irrelevant. Since it is held that the very applicability of Rule 35 of FR 22 is totally misconceived, I am of the considered opinion that the exercise made by the Government is totally unwarranted, illegal, illogical and irrational and therefore violates Articles 14 and 19(1)(g) of the Constitution of India. The above view is also supported by a decision of the Division Bench of this Court in DR. P. RAMASAMY, CHENNAI ..VS.. STATE OF TAMIL NADU AND OTHERS (200 3 (3) M.L.J. 792) which also relates to the merit promotees under Career Advancement scheme and arose under the Madras University Act, wherein it is held that the merits of persons appointed under the development scheme is no less than the persons of direct recruitment.

13. Since the issue is not at all related to interse seniority, the Government had unnecessarily chosen to invoke Rule 35 of FR 22, presumably alleging disparity in the service conditions. Merely because the source of recruitment in the case of regular promotees as well as merit promotees differs, the same cannot be a ground to refuse the scale of pay already conferred on the petitioner, creating certain vested rights on them, even without giving any reasonable opportunity.

14. For all the reasons stated above, I am inclined to quash

the Government Order and to allow the writ petition as prayed for and consequently, the merit promotees viz., the professors promoted under the Career Advancement scheme from the post of Associate Professors, who are members of the petitioner association shall be entitled for entire salary as fixed by the second respondent university, exercising power under Regulation 10(3) of the Regulations and the arrears if any shall be paid to them.

15. The writ petition is ordered accordingly. No costs.

Index: Yes
Internet: Yes

Dpn/-

To:

1. State of Tamil Nadu,
rep. by Secretary to
Government,
Animal Husbandry and Fisheries
Department, Madras - 600 009.

2. Tamil Nadu Veterinary and Animal
Sciences University,
represented by its Registrar
Madras - 7.